

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 3199 – SB 3137

April 13, 2010

SUMMARY OF AMENDMENT (016616): Deletes all language after the enacting clause. Abolishes the Post-Conviction Defender Commission (PCDC) effective December 31, 2010. By January 1, 2011, requires the Administrative Office of the Courts (AOC) to assume the duties of the PCDC and the Office of the Post-Conviction Defender (OPCD) for post-conviction proceedings initiated on or before December 31, 2010. Prohibits the AOC from representing any indigent person convicted and sentenced to death in any post-conviction proceeding initiated on or after January 1, 2011.

FISCAL IMPACT OF ORIGINAL BILL:

MINIMAL

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

Increase State Expenditures – \$69,500/One-Time/FY11-13

Net Impact – Exceeds \$600,000/Recurring

Other Fiscal Impact – Funds in the amount of \$974,800 included in the proposed FY10-11 Governor's Budget and \$1,948,600 in FY11-12 for staff and operations of the Office of the Post-Conviction Defender will shift to the Administrative Office of the Courts.

Cases filed on or after January 1, 2011, will be shifted to private appointed counsel in cases in which the Public Defender cannot provide representation due to conflict of interest or because the Court appoints private counsel for other reasons. Costs of litigation for private counsel will increase compared to the Office of the Post-Conviction Defender due to less experience of private counsel in capital case litigation and greater time required to research and prepare post-conviction cases. The amount of this increased recurring cost cannot reasonably be quantified but is estimated to exceed \$100,000.

Assumptions applied to amendment:

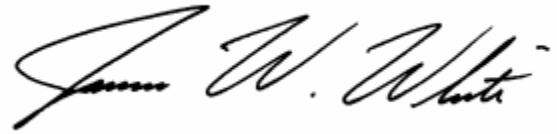
- The OPCD currently is representing 15 petitioners at the trial level and 13 at the appellate level. Under current law, the OPCD pays for attorneys and investigators out of

its budget and the AOC pays for experts and mitigation specialists. According to the OPCD, each attorney has an average of six cases.

- Effective January 1, 2011, the AOC will assume the duties of the OPCD for existing cases. The recommended budget for FY10-11 is \$1,948,600. Of that amount \$1,533,900 is personnel expenditures with \$414,700 remaining for operational expenditures. The OPCD currently employs 19 staff members. The estimate assumes the OPCD budget along with the current 19 positions will shift to the AOC to continue representation of the petitioners. For FY10-11, \$974,800 of the recommended budget will shift from OPCD to the AOC to provide funding for the remaining six months of that fiscal year. Beginning in FY11-12, the full amount of \$1,948,600 will shift from OPCD to the AOC to provide funding for the existing cases.
- For capital post-conviction petitions filed on or after January 1, 2011, neither the AOC nor the OPCD, which will no longer exist, will have a role in the appointment of counsel. The District Public Defenders Conference (DPDC) will be appointed to 65 percent of any new cases previously assigned to the OPCD. Based on current staffing, for every four cases assigned, the DPDC will require two additional attorneys, one investigator, one paralegal, and one secretary to handle the additional responsibilities. In FY10-11, an increase in state expenditures of \$413,200 recurring and one-time expenditures of \$26,700 for two additional attorneys, one investigator, one paralegal, and one legal secretary. In FY11-12, an increase in state expenditures of \$690,800 recurring and one-time expenditures of \$16,100 for two additional attorneys and one additional investigator. In FY12-13, an increase in state expenditures of \$1,130,700 and one-time expenditures of \$26,700 for two additional attorneys, one investigator, one paralegal, and one legal secretary.
- For the remaining 35 percent of new cases, the courts will appoint private counsel. In those cases, the AOC would be responsible for compensating all experts, investigators, mitigation specialists, and attorneys.
- Pursuant to Tennessee Supreme Court Rule 13, each capital petitioner is entitled to the appointment of two attorneys. The attorneys will receive \$80 per hour for in-court work and \$60 per hour for out-of-court work. The investigators will receive \$50 per hour. Rule 13 provides that in capital post-conviction cases, the trial court should not authorize more than \$20,000 for all investigative services unless it in its sound discretion the trial court determines that extraordinary circumstances exist that have been proven by clear and convincing evidence.

CERTIFICATION:

This is to duly certify that the information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, reading "James W. White". The signature is written in a cursive style with a large, stylized "J" and "W".

James W. White, Executive Director

/lsc